Atty. Dkt. No. 060953-0127

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: **Fred SAVRIJ-DROSTE *et al.***

Title: **BEVERAGE CONTAINER**

Appl. No.: **09/806,026**

Filing Date: **09/13/2001**

Examiner: **Curtis Edward Sherrer**

Art Unit: **1761**

DECLARATION UNDER 37 C.F.R. §1.132

I, Maril Kamp, declare that:

1. I am a Manager in New Can Applications at Ball Packaging Europe Oss B.V., located at Parallelweg 1, P.O. Box 40, NL-5340 AA Oss, the Netherlands. Ball Packaging Europe Oss B.V. is a subsidiary of Ball Corporation, successor in interest to Schmalbach-Lubeca AG, the nominal assignee of the captioned application (hereafter, "the application"). I have no personal interest in the application or in the outcome of its prosecution.

2. I attended the Dutch Wageningen Agricultural University and graduated with a Degree in Food Technology. I have worked as a Food Technologist, working with cans, for over twenty years. Specifically, I have been employed as a New Can Applications Manager at Ball Packaging Europe since 1998. I am currently the Project Leader of Foaming Beverages at Ball Packaging Europe.

3. I have reviewed and I believe that I understand the disclosure, on pages 2 -12 of the application, regarding a method that employs a foaming medium to make a liquid that, as a consequence, provides "a stiff foam that stays in place for a longer time" than conventional foaming liquids (page 4, lines 37 & 38).

4. According to conventional technology, a beverage with nitrogen as the only foaming medium typically results in a foam layer of approximately 10 ml on a 200 ml liquid product. A beverage with nitrous oxide as the only foaming medium would be expected to

yield a foam layer that is stable for a shorter amount of time, compared to nitrogen alone or a combination of nitrogen, nitrous oxide and a cartridge.

5. Experiments performed under my direction followed the methodology in the application and revealed that, at refrigerator temperature (4 - 6 °C), a 50-70 ml layer of foam is produced on a 200 ml liquid product, such as a milk-based, coffee-based, or soy-based liquid, when a foaming medium of nitrogen and nitrous oxide is used.

6. The foam thus obtained is very creamy. The "very creamy" determination is based on Ball Packaging Europe Food Technologists' own tasting of the experimental products, as well as on reactions from customers and consumers.

7. Moreover, this foam is stable for about 15 minutes, due to the tiny bubbles in the foam when a combination of nitrogen and nitrous oxide is used as the foaming medium. By contrast, brewers traditionally have been satisfied with only three to four minutes of foam stability. Beer is usually saturated with carbon dioxide, or with a combination of carbon dioxide and nitrogen.

8. In addition, the use of a nitrogen/nitrous oxide foaming medium unexpectedly imparts a sweet flavor to milk-based drinks. Nitrous oxide has a sweet flavor, and so it can replace some sugar in a liquid product. The combination of nitrogen and nitrous oxide, when leaving a cartridge and rising through the liquid product in a can, picks up the flavor of the liquid product and gives a sweet flavor to the foam. This flavor can be perceived directly after opening the can containing the liquid product.

9. The results of these experiments convey to me that the combination of nitrogen and nitrous oxide, as a foaming medium for a liquid product, unexpectedly produces an added sweet flavor, as well as a surprising foam amount and stability.

10. I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true, and further that these statements are made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Date: 20-7-2005
(20 july 2005)

Maril Kamp